United Nations CED/C/TUN/CO/1/Add.1

International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
13 April 2017
English
Original: French
English, French and Spanish only

Committee on Enforced Disappearances

Concluding observations on the report submitted by Tunisia under article 29, paragraph 1, of the Convention

Addendum

Information received from Tunisia on follow-up to the concluding observations*

[Date received: 24 March 2017]

* The original version of this document has been issued without formal editing.

GE.17-06042 (E) 280417 010517

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I. Information relating to paragraph 15 of the concluding observations

Paragraph 15

The Committee recommends that the State party adopt the legislative measures necessary to ensure that, as soon as possible:

(a) Enforced disappearance is incorporated into domestic law as an autonomous offence, in accordance with the definition contained in article 2 of the Convention, and that the offence carries appropriate penalties that take into account its extreme seriousness, while avoiding the imposition of the death penalty. It also invites the State party to establish the specific mitigating and aggravating circumstances provided for in article 7 (2) of the Convention;

(b) Enforced disappearance as a crime against humanity is criminalized in accordance with the standards provided for under article 5 of the Convention.

1. A working group has been established under the aegis of the Minister of Relations with Constitutional Bodies, Civil Society and Human Rights to draft a new bill on enforced disappearances.

2. This working group is composed of representatives of the Ministry of Justice, National Defence, Foreign Affairs, Health, Finance, and Relations with Constitutional Bodies, Civil Society and Human Rights, as well as representatives of the national committee for the review of the criminal code and the national committee for the review of the criminal procedure code, with the support of the International Center for Transitional Justice.

3. Before starting work, the members of the working group organized a consultation with the relevant partners to hear what they thought of the bill, and familiarized themselves with international standards in the area by participating in a workshop on the crime of enforced disappearance, organized in cooperation with the Office of the High Commissioner for Human Rights.

4. The bill on enforced disappearances that is being finalized draws on the International Convention for the Protection of All Persons from Enforced Disappearance and the recommendations of the Committee on Enforced Disappearances.

5. In coordination with the committees for the review of the criminal code and the review of the criminal procedure code, the new bill will largely incorporate the criminal code, while the procedural aspects of the bill will become part of the criminal procedure code.

6. The first draft of the bill has set out the crime of enforced disappearance as an autonomous offence, abiding by the definition contained in article 2 of the Convention, and providing for appropriate penalties that take into account the seriousness of the crime.

7. Specific mitigating and aggravating circumstances have been provided for in the bill in line with the provisions in article 7 (2) of the Convention.

8. This bill will be submitted shortly to the Council of Ministers for adoption and submission to the Assembly of the Representatives of the People.

II. Information relating to paragraph 23 of the concluding observations

Paragraph 23

The Committee recommends that the State party intensify its efforts to ensure that, without delay:

(a) All past cases of enforced disappearance are investigated thoroughly and impartially and that investigations continue until the fate of the disappeared persons has been clarified;

(b) All those involved in the perpetration of an enforced disappearance, including military and civilian superiors, are prosecuted and, if found guilty, punished in accordance with the gravity of their acts;

(c) All persons who were forcibly disappeared and whose fate is not yet known are searched for and located and that, in the event of death, their remains are identified, respected and returned;

(d) All persons who have suffered harm as the direct result of an enforced disappearance receive adequate reparation that includes the means for their rehabilitation and takes account of gender issues, as well as prompt, fair and adequate compensation.

9. The crimes of enforced disappearances covered by Organizational Act No. 53 of 24 December 2013 on transitional justice and which are referred by the Truth and Dignity Commission to the special criminal divisions for transitional justice shall be subject to thorough and impartial investigations. The enactment of the bill on enforced disappearances will facilitate the work of the judges specialized in this field by criminalizing enforced disappearance as an autonomous offence and providing for the possibility of prosecuting all those involved in the perpetration of an enforced disappearance.

10. The victims of enforced disappearances, who are covered by Organizational Act No. 53 of 24 December 2013 on transitional justice, will be afforded compensation by the Truth and Dignity Commission and the process of transitional justice.

III. Information relating to paragraph 30 of the concluding observations

Paragraph 30

The Committee recommends that the State party adopt all the measures necessary to ensure that all persons deprived of liberty, irrespective of the offence of which they are accused, are afforded, de jure and de facto, from the outset of their deprivation of liberty, all the fundamental legal safeguards provided under article 17 of the Convention. In particular, the Committee recommends that the State party guarantee that:

(a) All persons deprived of liberty have access to a lawyer from the outset of deprivation of liberty and can communicate without delay with their relatives or any person of their choosing and, in the case of foreigners, with their consular authorities;

(b) Any person with a legitimate interest can have prompt and easy access to at least the information listed in article 18 (1) of the Convention, including during the custody period;

(c) All deprivations of liberty, without exception, are entered in uniform registers and/or records, which include, as a minimum, the information required under article 17 (3) of the Convention;

(d) Registers and/or records of persons deprived of liberty are filled out and updated promptly and accurately and are subject to periodic checks and, in the event of irregularities, the officials responsible are adequately sanctioned.

11. With regard to the safeguards provided for in the Tunisian legal framework for all persons deprived of liberty during custody, the new amendment to the criminal procedure code as set out in article 13 bis (which entered into force in June 2016) guarantees the presence of a lawyer for every detainee and a reduction in the duration of detention to 48 hours for a serious crime and 24 hours for a minor offence.

12. This amendment will strengthen legal safeguards for the detainee during the initial stage of the inquiry by trying to establish a balance between human rights and the right of society to see offenders punished.

13. This new Act will thus enable a detainee to request the criminal investigation officer to call his or her lawyer whenever necessary, during working hours. The suspect is entitled to a 30-minute meeting in private with his or her lawyer throughout the period of the detention. The signature of the accused's lawyer, if present, must appear on the preliminary inquiry reports. This guarantees that the preliminary inquiry has been properly conducted.

14. The criminal investigation officer must inform the suspect in a language he or she understands of the measure being taken against him or her, the reasons for it and its duration, and he must tell the suspect his or her rights under the law, in particular the possibility of requesting a medical examination during his or her time in custody.

15. The criminal investigation officer must also inform one of the suspect's parents, children, siblings or spouse, as chosen by the suspect, of the measure being taken against him or her. The person held in custody or one of the above-mentioned persons may request a medical examination at any point throughout the custody or at its term.

16. The report drawn up by the criminal investigation officer must state: that the suspect has been notified of the measure being taken against him or her and of the reasons for it; that the legal safeguards have been read to the detainee; whether or not the family of the detainee has been notified; the request for a medical examination, if filed by the suspect or a member of his or her family; the date and time of the beginning and end of the custody; and the date and time of the beginning and end of the interrogation. It must carry the signature of the criminal investigation officer and of the suspect or, if the latter refuses, a statement to this effect giving the reasons for the refusal.

17. Criminal investigation officers in custody centres must keep a special register, numbered and signed by the State prosecutor or his or her alternate, which must contain the following information: the identity of the detainee; the date and time of the beginning and end of custody; notification to the family of the measure taken; and the request for a medical examination, if filed by the detainee or by one of his or her parents, children, siblings or spouse.